IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE

WRIT PETITION NO 273 OF 1994

Shri Pralhad Dagadu Kalyankar,
Residing at 876, Bhavani Peth,
Pune-411002. ..Petitioner.

Vs.

1.Shri Laxman Rambhau Palange,
residing at 876, Bhawani,
Peth, Pune-411002.

2.Babulal Rambhau Palange,
874 Bhavani Peth, Pune-2. ..Respondents.

Mr. V.B. Rajure for the petitioner.

None for the respondents.

CORAM : ANOOP V.MOHTA J.

DATE : 19TH JULY, 2005.

ORAL JUDGMENT

. The present Petitioner-tenant-landlord has invoked Article 227 of the Constitution of India and prayed to consider his petition for bonafide need, as the Additional District, Judge, Pune, (appellate Court) by impugned Judgment and order dated 12/2/1993, has set aside the judgment and decree passed by the learned 5th Additional Judge, Small Causes Court, Pune, (trial Court) in Suit No. 2021/1984, dated 6/11/1989, and that resulted into dismissal of the suit filed for possession

of the premises admeasuring 7’ X 9’ one room, which is situated in House NO. 876, Bhawani Peth, Pune, after issuance of demand notice dated 19/7/1984, as the respondents-tenants were in arrears of rent from 1-6-1977 to 30-6-1984 and also on the ground of bonafide need. There was no response from the respondents-tenants. Therefore, suit was filed for possession in the Court of 5th Additional Judge, Small Causes Court, Pune, on 12/11/1984. The learned trial Court, after considering the material, as well as, the evidence on the record, granted the decree basically on the ground of bonafide and reasonable need and also after taking into consideration, a greater hardship. The reversal order by the appellate Court therefore, challenged by the petitioner landlord.

2. Heard the learned Counsel, Mr. Rajure, for the petitioner. None appeared for the respondents. Undisputed position in the present case, as recorded by the Courts below, are that the petitioner-landlord is staying in two rooms admeasring 9’ X 10’ and 8’ X 10". The family members of the petitioner landlord are 11 in numbers, which includes his wife, 4 sons, 2 daughters and three grand children. Therefore, they are in

reasonable need of the premises, in question, as the present accommodation is insufficient for his family. There is no dispute, so far as this aspect, is concerned. Therefore, the trial Court granted the decree for possession on this ground.

3. The appellate Court however, reversed the said finding, basically by observing that the suit room being in inhabitable condition and therefore, cannot be used for residence. Therefore, need of the respondent-landlord appears to be not bonafide and not reasonable. The scheme of Bombay Rent Act or any such Rent Control Legislation, nowhere provides that when the landlord filed an application for bonafide need for personal use and occupation of the premises, that premises must be in habitable condition. In the present case, if the case is made out by placing the material on the record that they are in need of the premises. The condition of the premises according to me is not very material. The landlord is the best person to repair and make necessary alteration, as per his need. This reasoning in no way sufficient to disturb the findings arrived at by the trial Court granting the decree for possession on the ground of bonafide need. There are no

other grounds, which can be borne out from the record, to accept the reasoning given by the appellate Court in question.

4. Considering the number of member, in the family of the petitioner-landlord and considering the additional factor, that the respondent-tenant in fact not residing in the suit premises, and as the issue of hardship also considered by the trial Court, and taking into account all these reasoning, I am of the view that the petitioner landlord is entitled for possession of the premises for reasonable and bonafide need.

5. In the result, the Judgment and order dated 12/2/1993 passed by the appellate Court is set aside. The Judgment and decree passed by the trial Court is restored. The Petition is allowed. Rule made absolute. Interim relief in terms of prayer clause (b). No order as to cost.

[ANOOP V. MOHTA, J.]